

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,  
MARISSA BLAIR, APRIL MUÑIZ,  
MARCUS MARTIN, NATALIE ROMERO,  
CHELSEA ALVARADO, JOHN DOE, and  
THOMAS BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM**

**JURY TRIAL DEMANDED**

**PLAINTIFFS' RESPONSE TO BURT COLUCCI'S  
EMAIL TO THE COURT**

Plaintiffs file this response to the email sent by Burt Colucci, the “Commander” of Defendant National Socialist Movement (“NSM”), on June 25, 2020, at 3:45 a.m., which the Court struck from the docket as improperly filed on June 26, 2020. *See* ECF Nos. 781, 782. In his email, Mr. Colucci asked the Court whether he has “any rights in this case” and claimed that he and NSM lacked notice of Plaintiffs’ Motion to Compel Discovery from NSM, which Plaintiffs filed on March 11, 2020, and which the Court granted on June 23, 2020. *See* ECF Nos. 674, 774. Plaintiffs agree that Mr. Colucci’s email was improperly filed. In addition, Mr. Colucci has made several false assertions in his communication with the Court, and Plaintiffs write to correct the record.

Mr. Colucci appears to claim that he and NSM lacked notice and an opportunity to respond to Plaintiffs’ motion to compel because he is “not receiving any legal documentation” and has “no council [*sic*] to advise me on how to proceed.” To the contrary, as the Court knows, NSM is represented by counsel. Mr. Edward ReBrook has represented NSM since March 2019. *See* ECF

Nos. 451, 742, 774. Mr. Colucci also claims that he and NSM have had “absolutely no contact with Mr. ReBrook since December 2019.” That is similarly untrue for at least the reasons set forth below.

*First*, on May 28, 2020, Mr. ReBrook contacted Mr. Colucci to request that Mr. Colucci comply with his discovery obligations by providing information on potential NSM custodians, providing credentials to NSM’s social media accounts, and turning over NSM electronic devices to the discovery vendor for imaging. Mr. Colucci responded and told Mr. ReBrook to “no longer contact me regarding these matters.” *See* ReBrook Email to Phillips and Bloch, May 28, 2020 (attached as Exhibit A).

*Second*, on April 17, 2020, Mr. ReBrook’s assistant, Acacia Dietz, provided Mr. Colucci with filings in this case; informed Mr. Colucci that “the judge will most likely hold the Florida nonprofit NSM as the same NSM named in this current litigation” and that “you/NSM will be required to cooperate/participate in this discovery process”; and asked Mr. Colucci “to cooperate and participate in this litigation and discovery process.” ECF No. 712-1 at 2-3. Mr. Colucci responded, “Other than you agreeing to listen in on behalf of the NSM Detroit at my deposition, have I retained you?” *Id.* at 2.

*Third*, in a filing on April 20, 2020, Mr. ReBrook represented to the Court that he has made “efforts to persuade Mr. Colucci” that “the Florida NSM would be required to participate and cooperate with discovery,” and that Mr. ReBrook has “attempted to represent the NSM in this litigation for the past year with little to no cooperation from its current leadership.” ECF No. 712 at 2.

Mr. Colucci should not be excused from his and NSM's discovery obligations based on the false claim that he is not receiving notice or due process when he has purposefully chosen to be absent from the litigation.

Dated: June 26, 2020

Respectfully submitted,

/s/ Robert T. Cahill

Robert T. Cahill (VSB 38562)  
COOLEY LLP  
11951 Freedom Drive, 14th Floor  
Reston, VA 20190-5656  
Telephone: (703) 456-8000  
Fax: (703) 456-8100  
rcahill@cooley.com

Of Counsel:

Roberta A. Kaplan (*pro hac vice*)  
Julie E. Fink (*pro hac vice*)  
Gabrielle E. Tenzer (*pro hac vice*)  
Michael L. Bloch (*pro hac vice*)  
Emily C. Cole (*pro hac vice*)  
Alexandra K. Conlon (*pro hac vice*)  
Jonathan R. Kay (*pro hac vice*)  
KAPLAN HECKER & FINK LLP  
350 Fifth Avenue, Suite 7110  
New York, NY 10118  
Telephone: (212) 763-0883  
rkaplan@kaplanhecker.com  
jfink@kaplanhecker.com  
gtenzer@kaplanhecker.com  
mbloch@kaplanhecker.com  
ecole@kaplanhecker.com  
aconlon@kaplanhecker.com  
jkay@kaplanhecker.com

Karen L. Dunn (*pro hac vice*)  
Jessica E. Phillips (*pro hac vice*)  
William A. Isaacson (*pro hac vice*)  
Katherine M. Cheng (*pro hac vice*)  
BOIES SCHILLER FLEXNER LLP  
1401 New York Avenue, NW  
Washington, DC 20005  
Telephone: (202) 237-2727  
Fax: (202) 237-6131  
kdunn@bsfllp.com  
jphillips@bsfllp.com  
wisaacson@bsfllp.com  
kcheng@bsfllp.com

Yotam Barkai (*pro hac vice*)  
BOIES SCHILLER FLEXNER LLP  
55 Hudson Yards  
New York, NY 10001  
Telephone: (212) 446-2300  
Fax: (212) 446-2350  
ybarkai@bsfllp.com

Alan Levine (*pro hac vice*)  
Philip Bowman (*pro hac vice*)  
COOLEY LLP  
55 Hudson Yards  
New York, NY 10001  
Telephone: (212) 479-6260  
Fax: (212) 479-6275  
alevine@cooley.com  
pbowman@cooley.com

David E. Mills (*pro hac vice*)  
Joshua M. Siegel (VSB 73416)  
COOLEY LLP  
1299 Pennsylvania Avenue, NW  
Suite 700  
Washington, DC 20004  
Telephone: (202) 842-7800  
Fax: (202) 842-7899  
dmills@cooley.com  
jsiegel@cooley.com

J. Benjamin Rottenborn (VSB 84796)  
WOODS ROGERS PLC  
10 South Jefferson St., Suite 1400  
Roanoke, VA 24011  
Telephone: (540) 983-7600  
Fax: (540) 983-7711  
brottenborn@woodsrogers.com

*Counsel for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2020, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Elmer Woodard  
5661 US Hwy 29  
Blairs, VA 24527  
isuecrooks@comcast.net

James E. Kolenich  
Kolenich Law Office  
9435 Waterstone Blvd. #140  
Cincinnati, OH 45249  
jek318@gmail.com

*Counsel for Defendants Jason Kessler, Nathan Damigo, Identity Europa, Inc. (Identity Evropa), Matthew Parrott, and Traditionalist Worker Party*

Justin Saunders Gravatt  
David L. Campbell  
Duane, Hauck, Davis & Gravatt, P.C.  
100 West Franklin Street, Suite 100  
Richmond, VA 23220  
jgravatt@dhdglaw.com  
dcampbell@dhdglaw.com

*Counsel for Defendant James A. Fields, Jr.*

William Edward ReBrook, IV  
The ReBrook Law Office  
6013 Clerkenwell Court  
Burke, VA 22015  
edward@rebrooklaw.com

*Counsel for Defendants Jeff Schoep, National Socialist Movement, and Nationalist Front*

John A. DiNucci  
Law Office of John A. DiNucci  
8180 Greensboro Drive, Suite 1150  
McLean, VA 22102  
dinuccilaw@outlook.com

*Counsel for Defendant Richard Spencer*

Bryan Jones  
106 W. South St., Suite 211  
Charlottesville, VA 22902  
bryan@bjoneslegal.com

*Counsel for Defendants Michael Hill, Michael Tubbs, and League of the South*

I further hereby certify that on June 26, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

Christopher Cantwell  
christopher.cantwell@gmail.com

Vanguard America  
c/o Dillon Hopper  
dillon\_hopper@protonmail.com

Robert Azzmador Ray  
azzmador@gmail.com

Elliott Kline a/k/a Eli Mosley  
eli.f.mosley@gmail.com  
deplorabletruth@gmail.com  
eli.r.kline@gmail.com

Matthew Heimbach  
matthew.w.heimbach@gmail.com

/s/ Robert T. Cahill

Robert T. Cahill (VSB 38562)  
COOLEY LLP

*Counsel for Plaintiffs*